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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES LYNN O'HINES,
12 CDCR #K-86989, ADC #197067,

13 Plaintiff,

14 vs.

15 TOERS-BIJNS, et al.,
16

17 Defendants.
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Civil No. 08-0586 LAB (JMA)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEE OR MOVE TO
PROCEED *IN FORMA PAUPERIS*
PURSUANT TO 28 U.S.C. § 1915(a)**

19 Plaintiff, an inmate currently incarcerated at the Arizona State Prison Complex in
20 Florence, Arizona, and proceeding pro se, has filed a civil rights complaint pursuant to 42 U.S.C.
21 § 1983.¹

22 **I.**

23 **Failure to Pay Filing Fee or Request IFP Status**

24 All parties instituting any civil action, suit or proceeding in a district court of the United
25 States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C.
26 § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted
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28 ¹ The Court notes that Plaintiff was a California state inmate. Thus, it is unclear whether Plaintiff is currently a California state inmate housed temporarily in Arizona or he is an inmate within the Arizona State correctional system.

1 leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v.*
2 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

3 Here, Plaintiff has neither prepaid the \$350 filing fee required to commence this action,
4 nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate
5 dismissal pursuant to 28 U.S.C. § 1914(a).

6 **II.**

7 **Conclusion and Order**

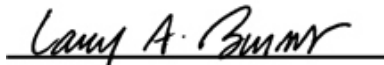
8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is "Filed"
12 to: (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to proceed
13 IFP which includes a certified copy of his trust account statement for the 6-month period
14 preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR
15 3.2(b).

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the
17 Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma*
18 *Pauperis*." If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
19 attached Motion to Proceed IFP within that time, this action shall remain dismissed without
20 prejudice and without further Order of the Court.

21 DATED: April 3, 2008

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23 **HONORABLE LARRY ALAN BURNS**
24 United States District Judge